IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7604 OF 2007

Sarvodaya Shikshan Prasarak
Mandal and anr. ..Petitioners

Vs.

Shalini Malikarjun Todkari
and anr. ..Respondents

Mr. R.G. Ketkar i/by Mr. R.S. Khadapkar for petitioners.
Ms. Amrapali Kasbe i/by Mr.V.V. Purvant for respondent no.1.
Mr. S.K. Chinchalikar, AGP for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : December 18, 2007.

P.C.:

1. Heard Mr. Ketkar the learned counsel for the petitioners. Ms. Amrapali Kasbe i/by Mr. Purvant appears for the respondent no.1. The learned AGP appears for respondent no.2.

2. This petition under Article 227 of the Constitution impugns the interlocutory order passed by the School Tribunal on 14/8/2007 below Exh.27 filed in

Appeal No. 177 of 2005 and by the said order the amendment application, so as to amend the appeal memo, has been allowed.

3. In the pending appeal (originally filed as a Civil Suit and on transfer to the School Tribunal registered as an Appeal in the year 2005), the respondent no.1 has challenged the termination of her service as an Assistant Teacher with effect from 30/4/1992 as being illegal. She also claims that she worked for more than two years and thus became a deemed permanent teacher. The management, on the other hand, in its reply filed before the School Tribunal contended that the appellant was appointed on temporary basis and that too against a reserved post.

4. By the proposed amendment the appellant sought to withdraw some averments and substitute many others. In short, it was tried to be contended by her that the post for which she was appointed could not have been reserved as per the roster prevailing at the relevant time and in any case she was a deemed permanent teacher. She also sought to add that she was

underpaid and the prescribed payscale was not offered to her. It is well settled that an appeal under Section 9 of M.E.P.S. Act, 1977 is maintainable against an order of termination by way of dismissal or removal or otherwise termination or reduction in rank or supersession while making an appointment to any post by promotion. The appellant's main challenge is to the order of termination. Whether her appointment was on temporary basis, whether it was against a post reserved for any backward class candidate as provided under Rule 9 of the MEPS Rules 1981 or whether she was not offered the prescribed payscale are all issues which will have to be dealt with by the respondent no.2 who is also impleaded as respondent no.2 before the School Tribunal. The Education Officer being a supervisory and controlling authority of the Secondary Schools as per the MEPS Act and the Rules thereunder, it is necessary for him to file an affidavit-in-reply and clarify whether the appellant was appointed against a permanent post, whether she was appointed on a temporary basis and/or whether she was appointed against a reserved post. Once such an affidavit comes on record and is supported by the original record, as

may be sought by the School Tribunal, the Tribunal itself will be able to examine the contentions raised by the management that the appellant was appointed against a reserved post and purely on temporary basis. The amendment sought to be made would be redundant.

5. Hence, the petition is disposed by following directions:-

(a) The Education Officer, Secondary, Zilla Parishad, Solapur is hereby directed to file a reply before the School Tribunal before 31/1/2008 in Appeal No. 177 of 2005 and a copy of the same shall be served on both the parties i.e. present petitioners as well as the respondent no.1.

(b) The appeal shall be thereafter heard and decided on its own merits as expeditiously as possible and preferably within a period of six months after the Education Officer files his reply.

(c) The impugned order dated 14/8/2007 is quashed and set aside and consequently the Application at Exh.27 in Appeal No. 177 of 2005 stands rejected.

. The learned AGP to communicate this order to the Education Officer, Secondary, Zilla Parishad, Solapur forthwith.

(B.H. Marlapalle,J.)